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Attorney for Defendant LCM Properties, LLC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

CONNER SLEVIN, an individual,

Plaintiff,

v.

**LCM PROPERTIES, LLC,
a limited liability company,**

Defendant.

Case No. 3:23-cv-01558-SI

DEFENDANT LCM PROPERTIES, LLC'S
ANSWER TO COMPLAINT

In response to plaintiff's Complaint, defendant LCM Properties, LLC, admits, denies and alleges as follows:

1.

Defendant admits that plaintiff sent defendant a demand letter.

2.

Defendant denies the allegations in paragraph 2 of the Complaint.

3.

Defendant admits that this Court has jurisdiction.

4.

Defendant admits that venue is proper in this Court.

5.

Defendant has insufficient knowledge to admit or deny the allegations in paragraph 5 of the Complaint, and therefore deny the same.

6.

Defendant has insufficient knowledge to admit or deny the allegations in paragraph 6 of the Complaint, and therefore deny the same.

7.

Defendant has insufficient knowledge to admit or deny the allegations in paragraph 7 of the Complaint, and therefore deny the same.

8.

Defendant has insufficient knowledge to admit or deny the allegations in paragraph 8 of the Complaint, and therefore deny the same.

9.

Defendant has insufficient knowledge to admit or deny the allegations in paragraph 9 of the Complaint, and therefore deny the same.

10.

Defendant admits the allegations in paragraph 10 of the Complaint.

11.

Defendant has insufficient knowledge to admit or deny the allegations in paragraph 11 of the Complaint, and therefore deny the same.

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12.

Defendant admits that it is a lessor of the property located at 3335 SE 82nd Ave., Portland, OR 97266.

13.

Defendant has insufficient knowledge to admit or deny the allegations in paragraph 13 of the Complaint, and therefore deny the same.

14.

Defendant denies the allegations in paragraph 14 of the Complaint.

15.

Defendant has insufficient knowledge to admit or deny the allegations in paragraph 15 of the Complaint, and therefore deny the same.

16.

Defendant has insufficient knowledge to admit or deny the allegations in paragraph 16 of the Complaint, and therefore deny the same.

17.

Defendant has insufficient knowledge to admit or deny the allegations in paragraph 17 of the Complaint, and therefore deny the same.

18.

The allegations in paragraph 18 of the Complaint are legal conclusions and do not require a response.

19.

The allegations in paragraph 19 of the Complaint are legal conclusions and do not require a response.

20.

The allegations in paragraph 20 of the Complaint are legal conclusions and do not require a response.

21.

The allegations in paragraph 21 of the Complaint are legal conclusions and do not require a response.

22.

Defendant denies the allegations in paragraph 22 of the Complaint.

23.

Defendant has insufficient knowledge to admit or deny the allegations in paragraph 23 of the Complaint, and therefore deny the same.

24.

Defendant has insufficient knowledge to admit or deny the allegations in paragraph 24 of the Complaint, and therefore deny the same.

25.

Defendant denies the allegations in paragraph 25 of the Complaint.

26.

Defendant denies the allegations in paragraph 26 of the Complaint.

27.

Defendant denies the allegations in paragraph 27 of the Complaint.

28.

Defendant denies the allegations in paragraph 28 of the Complaint.

29.

Defendant denies the allegations in paragraph 29 of the Complaint.

30.

Defendant denies the allegations in paragraph 30 of the Complaint.

31.

Defendant denies the allegations in paragraph 31 of the Complaint.

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32.

Defendant denies the allegations in paragraph 32 of the Complaint.

33.

Defendant denies the allegations in paragraph 33 of the Complaint.

34.

Defendant denies the allegations in paragraph 34 of the Complaint.

35.

The allegations in paragraph 35 of the Complaint are legal conclusions and no response is required.

36.

Defendant denies the allegations in paragraph 36 of the Complaint.

37.

Defendant denies the allegations in paragraph 37 of the Complaint.

38.

Defendant denies the allegations in paragraph 38 of the Complaint.

39.

Defendant denies the allegations in paragraph 39 of the Complaint.

40.

Defendant denies the allegations in paragraph 40 of the Complaint.

41.

Defendant denies the allegations in paragraph 41 of the Complaint.

42.

Defendant denies the allegations in paragraph 42 of the Complaint.

43.

Unless expressly admitted above, defendants deny each and every remaining allegation in plaintiff's Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

44.

Plaintiff's Complaint fails to state a claim against defendant.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations/Repose)

45.

Plaintiff's claims are barred by the applicable statutes of limitations or statute of repose.

THIRD AFFIRMATIVE DEFENSE

(Unclean Hands/Unjust Enrichment)

46.

Plaintiff is barred from recovering any relief against Defendant under the equitable doctrines of unclean hands and unjust enrichment.

FOURTH AFFIRMATIVE DEFENSE

(Exhaustion of Remedies)

47.

Plaintiff's claims are barred to the extent Plaintiff failed to exhaust statutory, administrative, or judicial remedies and has failed to meet all necessary conditions precedent prior to seeking declaratory and injunctive relief.

FIFTH AFFIRMATIVE DEFENSE

(Undue Burden)

48.

The modifications demanded by Plaintiff would place an undue burden on Defendant, they are disproportionate to the cost, or are not readily achievable.

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SIXTH AFFIRMATIVE DEFENSE

(Feasibility)

49.

The modifications, alterations, barrier removal, or alternative methods demanded by Plaintiff are not technically feasible.

SEVENTH AFFIRMATIVE DEFENSE

(De Minimis)

50.

The claimed violations are de minimis and nonactionable because they materially meet the technical requirements, do not materially impair Plaintiff's use of the Premises for its intended purpose, and Defendant has not suffered irreparable harm and is not entitled to injunctive relief.

EIGHTH AFFIRMATIVE DEFENSE

(Moot)

51.

Plaintiff's claims are barred to the extent the changes she seeks are, or will be, moot.

NINTH AFFIRMATIVE DEFENSE

(Access and Accommodation)

52.

Plaintiff has not been denied full and safe access to all of the benefits, accommodations, and services of any of the facilities at the Premises.

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TENTH AFFIRMATIVE DEFENSE

(Time to Evaluate)

53.

The Defendant requests 60 days to assess its property and be granted the opportunity to cure any defects found following an inspection. *See Gomez v. Empower “U”, Inc.*, 2017 WL 4919224 (S.D. Fla. Oct. 31, 2017).

COUNTERCLAIM

(Attorney’s Fees)

54.

Defendant is entitled to recover its reasonable attorneys’ fees and costs of litigation from pursuant to 42 U.S.C. § 12205 and 28 C.F.R. § 36.505.

WHEREFORE, having fully answered, defendants request that plaintiff’s Complaint be dismissed in its entirety with prejudice, with all available costs, disbursements, and attorneys’ fees awarded to defendants, and such other relief as the court deems just and equitable.

Dated this 1st day of December, 2023.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

By: s/ William J. Ohle

William J. Ohle, OSB #913866

Of Attorneys for Defendant LCM
Properties, LLC